

Before the
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

In the Matter of:

Expedited Consideration for Declaratory Rulings)	
On the transfer of traffic only under AT&T)	
Tariff Section 2.1.8., and Related Issues.)	
)	
Primary Jurisdiction Referral)	
from the NJ District Court)	
)	CCB/CPD 96-20
)	DA – 06-2360
)	WC Docket No. 06-210
One Stop Financial, Inc)	
Group Discounts, Inc.)	
Winback & Conserve Program, Inc.)	
800 Discounts, Inc.)	
Petitioners)	
)	
and)	
AT&T Corp.)	
Respondent)	

ADDITIONAL COMMENTS IN RESPONSE TO AT&T's Jan.11th
COMMENTS
REAGARDING THE REQUEST FOR AN EXTENSION OF TIME TO
FILE REPLY COMMENTS AND THE CONSOLIDATION OF
PETITIONS

To FCC:
Marlene H. Dortch
Secretary
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Office of the Secretary

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Representing: One Stop Financial, Inc., Group Discounts, Inc., 800 Discounts, Inc.
and

Winback & Conserve Program, Inc

Its President

Jan 11th 2007

Introduction

We just received AT&T's newest Jan.11th 2007 comments and as usual it is loaded with inaccuracies.

1) We wish to point out several AT&T intentional misrepresentations in AT&T's Jan.11th 2007 comments.

AT&T on the bottom of page 2 states:

It is obvious that the request by Tips Marketing (which is not a party in the District Court matter) is a ploy by Mr. Inga to have the Commission **consider issues that petitioners deliberately chose to litigate by filing a complaint with the District Court in NJ.** AT&T has previously explained, petitioners affirmatively abandoned any attempt to have the District Court refer **these issues**, yet Mr. Inga now seeks, through yet another of his entities, to have the Commission decide these issues.

2) Initially AT&T states in its introductory paragraph that there is no overlap between the issues in the telecom petition vs. the tax petition. AT&T here however states the issues are related and therefore overlapping issues, and thus should be consolidated.

3) The FCC has been provided with substantial documentation filed in the NJ District Court showing that these 1996 shortfall issues were strongly pursued by petitioners and debated by AT&T. For AT&T to state that the issues were abandoned simply makes it lose credibility. Why would the telecom petitioners ever abandon its claims? AT&T must lose credibility with the FCC when it makes such

statements, as the evidence shows hundreds of pages filed on these shortfall issues in all Courts and the FCC.

4) During oral argument at both the DC Circuit and the Third Circuit the topic of conversation was not just about transferring traffic. AT&T needs to review the comments of Judge Weiss in the Third Circuit and Judge Ginsburg in the DC Circuit. Both Judges made comments regarding pre June 17th 1994 grandfathered status of the plans. These Judges obviously realized the benefit of being able to move traffic while being able to negotiate S&T obligations. The FCC agreed!!! Oral Argument:

JUDGE GINSBURG: move it from somebody who's got the benefit of **grandfathering** and can get out of its obligation that way to somebody who's got the **benefit of a larger discount**.

MR. BOURNE: **That's correct.**

JUDGE GINSBURG: **Okay.**

5) For AT&T to state that shortfall issues and the sections (pre June 17th 1994 restructuring, 2.5.7

waiver due to circumstances beyond the customers control, Oct 1995 FCC order)

that address the management of shortfall is not an issue that needs to be resolved is

ironic. After all, it is AT&T who based its permanent denial of transferring traffic

on its position that it was going to be defrauded of shortfall!!! **AT&T is simply**

misrepresenting the fact that shortfall issues were apart of the DC Circuit case and

the FCC counsel agreed!!! Judge Bassler wanted all open issues to be resolved and

obviously this was an open issue in the DC Circuit and the FCC counsel Mr. Borne

agreed. This is just one of many comments made by the DC Circuit during oral

argument regarding shortfall sections of the tariff.

6) AT&T on page 4 agrees that the first Tips Declaratory Ruling request overlaps the telecom petitions, whereas it initial stated there was no overlap. However AT&T states the question is illusory. AT&T totally spins the request. AT&T states:

There is no dispute that CCI was subject to shortfall and termination obligations.

7) AT&T is spinning the request. The point of Tips petition question one is very simple: AT&T is arguing that S&T obligations transfer away from the Florida based CCI when a traffic transfer is done. Florida believes as well as Tips and the 4 Inga telecom Companies that the S&T obligations do not transfer. This is the same exact issue in Tips Petition as the 4 Inga telecom companies. Florida and Tips wish to prevent the FCC from deciding that the S&T obligations transfer from the Florida based company to the PA based PSE on a traffic only transfer. Florida doesn't know the telecom issues and is relying on the FCC.

8) AT&T's spin continues on page 4

The other three questions Tips Marketing raises all relate to whether AT&T could impose shortfall charges on CCI's non Florida and end-users or whether the shortfall allocation to CCI's master account was permissible. Because these issues all arise from the historical fact that CCI was subject to shortfall obligations, it is entirely unnecessary to decide whether AT&T should have processed the CCI-PSE transfer and, if it had done so, whether CCI would have remained subject to shortfall obligations.

9) AT&T again mixes apples and oranges. No one is arguing that CCI was not responsible for shortfall and termination obligations. CCI was responsible as were the Inga companies. All CSTPII plans have obligations. As per section 3.3.1.Q bullet 10 the responsibility for shortfall and termination obligations is the AT&T customer, here CCI and Inga. The question however is: Are these particular

CSTPII/RVPP plans immune from the actual infliction of S&T charges which may constitute a taxable event if such charges are attributable to CCI.

10) The FCC needs to decide on items such as A) pre June 17th 1994 restructuring, B) section 2.5.7 waiver due to circumstances beyond the customer's control, C) The FCC Oct 1995 order where AT&T grandfathered the CSTPII plans for a year. D)

Illegal remedy of S&T infliction due to exceeding the discount cap and initially apply the charges to the end-users instead off CCI. Having obligations does not constitute a taxable event or the ability to put an aggregator out of business!!!

11) All these issues need to be determined to establish what the taxable base is.

Florida's position is simple: **The taxes are based upon S&T charges that it does not know whether they should or should not have occurred.** Florida does not wish to collect taxes on these shortfall charges; then find out that the shortfall should have never been inflicted by AT&T in the first place. This would result in a situation where the taxes on the shortfall also should never occur. Additionally how could you barter shortfall when there possibly shouldn't have been shortfall. This is not that difficult to understand!

12) Florida and the IRS simply want to know what history should have actually taken place if the tariffs were correctly adhered to by AT&T. Should the traffic been transferred with or without the S&T obligations? Are there joint and several liability ramifications? Should the S&T charges been applied? To whom should they have been applied? All telecom issues needed to be determined to further determine tax issues and Tips reward.

13) AT&T continues with its nonsense at the top of page 5. AT&T claims that if the traffic transfer went through it would be AT&T's position that CCI and PSE would

both be responsible for S&T obligations due to section 2.1.8's joint and several liability provisions.

14) There are lots of problems with AT&T's position. A) Who is AT&T to make the call that it would be its position? That is what the FCC is for!

B) AT&T's position is wrong anyway according to 2.1.8(E). Under 2.1.8(E) the duration that the transferor remains jointly and severally liable for S&T obligations only pertains to plan transfers

not traffic transfers. Read your own tariff!!! It's clear as can be and if it is ambiguous it is ruled against AT&T anyway!!!

C) With joint and several liability issues this also raises jurisdictional issues for Florida. If CCI and PSE are both obligated and the Inga telecom Companies too; this would leave Florida up in the air as to how much revenue it could go after since PSE is a PA company, Inga is in NJ and CCI is in FL. There is no doubt that the telecom issues have to be decided on joint and several liability here as well as AT&T raises a very good point that needs FCC attention.

15) AT&T says at 5:

it doesn't make a whit of difference if PSE shared the obligation to pay such charges.

Boy you better not tell Florida that you believe the PA based PSE should have any responsibility for paying S&T charges. Florida taxing authorities want those S&T charges with the Florida based CCI. AT&T's point just strengthens the obvious need for these overlapping telecom issues to be decided.

16) At the bottom of page 5 AT&T states there would be no economy to consolidate the petitions. Look at the tariff law that is to be interpreted in both petitions:

Section 2.1.8, section 3.3.1.Q, and Section 2.1.8(E). All the tariff sections are the same. Additionally, all the undisputed facts are the same, and of course it is the same parties.

17) AT&T continues its nonsense at the top of page 6 stating that the Tips issues are “unnecessary tax issues.” How can AT&T make such a statement? There are issues that have to be determined that will result in Florida ascertaining if it has a tax base to pursue and how much of the tax base is within its jurisdiction.

18) AT&T provides the FCC with statements and exhibits that the IRS federal excise tax (FET) is not applicable anymore. You don’t think the IRS knows this? The transaction that we are referring to took place in June of 1996 and then the charges bartered in 1997. AT&T’s own exhibits show on page 14 (2) of their exhibit that the FET still **applied prior to March 1, 2003**. This section stressed that there will be no refunds from the IRS from FET prior to this March 1, 2003 date. So AT&T’s statement that the FET did not apply is obviously bogus.

19) There is absolutely no doubt that if the shortfall charges are deemed permissible by the FCC AT&T owes many millions not even including penalty and interest going back over 10 years. The IRS representative John Cann told me that in regards to taxes AT&T better hope that the FCC decides that the shortfall was not permissible on those CCI plans. The only thing it is waiting for now is for the FCC to determine if the shortfall should have been applied in the first place.

20) It’s not just IRS FET taxes or the sales taxes to Florida. What about the reality of barter? No one is refuting that AT&T’s shortfall and termination charges were exchanged for CCI’s defensive aid consulting services as CCI’s president Mr. Shipp **has testified during deposition.**

Mr. Shipp stated that the non disclosure agreement mandates that Mr. Shipp had to cooperate with AT&T to defend AT&T against the Inga Companies as part of the agreement so he did not have to pay the shortfall and termination charges. No one can deny this. AT&T did not deny this. AT&T just did not comment. The taxing authorities believe there must be some value to Mr. Shipp's consulting services or AT&T would not have required the non disclosure settlement agreement to contain this clause. Mr. Shipp was mandated to provide his service in exchange for not paying the shortfall service charges. Service for service non monetary transactions constitute barter under the law. Period!

21) AT&T has stated itself that CCI was a new company with little assets. It will be argued by Florida and the IRS that the main compensation provided by CCI was not the dropping of its claims but the major benefit of having CCI in the fold to help AT&T defend itself against the Inga Companies. Obviously there are very probable and serious tax ramifications involved here, but this is not for the FCC to decide. The FCC only needs to decide the telecom issues. AT&T's statement that there are no tax issues is absurd. The IRS and Florida are foaming at the mouth and will probably make a press release and expose AT&T's tax evasion if the shortfall charges are found permissible. We are talking maybe a tax bill of 40% on \$100 million in charges just for the barter issue before the penalty and interest going back 11 years!!! Throw in the FET and the sales taxes and AT&T is looking at \$100 million in taxes owed besides the fact that the IRS will report to the media that AT&T attempted to cover it up under a secret non disclosure agreement which it hid from its accounting firm PriceWaterhouseCoopers. AT&T basically cooked its books ala Enron. This will also lead to SEC questions. What about those investors you

were shorting AT&T's stock? If AT&T had paid its taxes there would have been much less income.

You can see why AT&T is desperate not to have these telecom issues decided because it is going to cost AT&T not only huge dollars but substantial loss of good will if the taxing authorities announce they bagged AT&T for huge dollars.

22) It should also be noted that Al Inga was an Enrolled Agent of the US Treasury Department and represented individuals and businesses before the IRS. The tax reward issues were not undertaken by a novice looking for telecom related benefits. AT&T says it's a ploy. No its not!

Tremendous tax research went into the filing and now it only hangs on telecom issues. Tips will receive many millions from the IRS and Florida if the charges are deemed permissible as to these plans.

23) On page 6 AT&T states that it is:

“unaware of any such inquiry” from Florida.

AT&T also states:

Tips has submitted no competent evidence that there is in fact, an inquiry by the Florida Department of Revenue. It's failure to do so is not surprising, because that agency's interest appears dubious given that Florida's statute of limitations on such a claim appears to have expired years ago.

24) This is contrary to the letter we received from AT&T's Mr. Brown in which **he made light of** the fact that a senior Florida counsel stated he was of course interested in the outcome of the FCC proceedings.

25) Additionally the IRS says that AT&T is welcomed to provide whatever information it has to the IRS Service Center to defend itself on these tax issues. However the IRS has stated that it would like a copy of the AT&T and CCI non disclosure settlement agreement. I have been given the following information by the IRS so that AT&T can send the information to:

IRS: Marilee Smuin
M/S 4110 ICE, 1973 N RULON WHITE BLVD. OGDEN, UT 84404
Claim: 29-60067

26) Florida also wants the non disclosure agreement and will subpoena for it as soon as it is determined if the S&T charges should have been applied to CCI's plan and Florida has the FCC decide jurisdictional matters by deciding telecom issues on shortfall issues and shortfall transfer issues.

27) The FCC was given a written letter from Florida counsel and the fax number for the IRS to contact it so the IRS will assure the FCC that these taxing authorities are very interested in the permissibility of the S&T charges as well as the way in which they were applied, and to which USA states in Florida's situation. There was no need for Tips to even provide that.

28) Tips has standing before the FCC on these issues and therefore the right to bring a Declaratory Ruling based upon its tax application and unsettled telecom issues that have a direct bearing on tax issues. These taxing authorities would have dropped the investigations two years ago if they believed there was a statute of limitations issue. AT&T's comments are all nonsense.

29) Probably the taxing authorities may consider the non disclosure of the shortfall charges and barter tied up within a non disclosed settlement agreement **fraud**; which would have no statute of limitation issues. The tax statute of limitations

issue is not for the FCC to decide. All the FCC is being requested to decide is telecom issues to determine tax issues which are very similar to those requested by the 4 Inga telecom companies.

30) AT&T's position on page 7 is that because AT&T removed the charges one month after it illegally put the charges on the end-users bill it should be treated as a no harm no foul situation. AT&T still doesn't get it! How much should be allocated to the end-users bills to reduce the discount is a part of 3.3.1.Q bullet ten. There is an allocation issue here and thus a jurisdictional issue for Florida if these end-users were not in Florida.

31) Additionally AT&T's statement does not address if the S&T obligations that were transferred from the end-users to CCI's sole master account were permissible in the first place. Furthermore, the fact that the charges were moved does not mean that there was not an illegal remedy. AT&T in the one month blew out the entire business.

32) It was no mistake as AT&T after being told not to bill the end-user in June of 1996 did it again in March of 1997 in the same exact manner. Here is an analogy: The murderer tells the Judge "Hey Judge they did remove the 200 bullets from the dead kids body before they buried that piece of ___, so let me off easy!" The point is the kid (plan) is dead---not that the bullets (charges) were removed! Get the point? AT&T's belief that it righted a wrong is absurd. In

fact tit is more than a tacit admission that it used an illegal remedy. The horse was already out of the barn. AT&T did it in June 1996 then did the same thing in March 1997. There was no mistake that was innocently repaired.

33) On the bottom of page 7 AT&T misstates Tips possible ways to collect its tax reward and its benefits of pursuing the petition.

A) Tips may win a tax reward if the shortfall is deemed valid and the taxes were not applied. AT&T is not in a position that it will argue that the charges are not valid.

B) The charges may be deemed permissible to be applied but due to the illegal remedy in which AT&T applied the charges AT&T can not rely upon them. In this scenario the 4 Inga telecom companies would be benefited by Tips additional pursuit of the same issue but Tips would also collect from the taxing authorities.

The FCC's stance on illegal remedies is that the carrier can not rely on them if illegally applied. So for telecom purposes the shortfall charges become invalid.

However, the taxing authorities don't care if the charges were illegally applied for tax purposes. The taxing authorities will still pursue their money and **Tips and the Inga Companies**

win on both cases. Because the illegal remedy is such a clear tariff issue this scenario is most probable to occur. AT&T in its comments admits it made the wrong choice. Therefore it benefits Tips to pursue the telecom issues that will help it get its tax reward and it does not cause Tips to argue against the Inga Companies.

C) It may be determined that there was a barter issue and this is yet another benefit to Tips reward possibilities. AT&T's position that Tips petition is unnecessary shows how necessary it is. If AT&T was not concerned about it, AT&T would simply defend it. The issues in Tips of course overlap and absolutely make AT&T argue against itself. AT&T is in a position where it is going to pay whether it is determined the shortfall charges are permissible against these plans or not. Its no wonder AT&T is saying the Tips petition is unnecessary.

34) AT&T states that allowing the shortfall issues into the Inga Companies telecom petition would allow for additional filings etc. First of all the shortfall issues are already in the Inga telecom petition as AT&T represented to Judge Bassler, when it stated all these issues are undisputed facts and are already before the Commission. Having these same shortfall issues resolved within a different case leads to increased filings etc. The FCC can not decide that it will not act on the Tips petition; Tips obviously has standing. That leaves it down to the question of whether the FCC wishes to have two simultaneous cases that will be resolving the same law on the same facts with the same parties involved.

35) AT&T again argues against itself in its footnote on page 8. AT&T states that The Inga Companies believed that it would fail in an attempt to argue with the District Court that it should expand the scope of what is on the table after it made its decision to send the case to the FCC. First of all the Inga Companies do not believe the District Court referral wanted to limit the adjudication of all issues. It would be unlike any Judge alive to say to the FCC: "Don't resolve the issues!"

36) It is common sense that the District Court would want all issues resolved. AT&T of course knows that and that is why AT&T Jan 5th letter states that New Judge Wigenton is incapable of learning the case. It was petitioners who suggested to the FCC that an extension be put in place while petitioners went back to Judge Wigenton for clarification on what she wanted resolved. AT&T ridiculously states that the Tips petition was done because it did not want to get clarification from the Judge Wigenton. That is exactly the opposite of what the Inga Companies proposed. AT&T has not hired lawyers it has hired revisionist history writers that Oliver Stone couldn't use.

37) AT&T asserts that it was no coincidence that the Tips petition surfaced after the District Court decision. First of all the Tips rewards application is two years old. The obvious reason why the Tips petition is surfacing now is that these Tips issues were expected to get resolved by the District Court as they are similar to the shortfall issues with a few nuances thrown in. When the District Court punted, Tips took action and decided to get its own Declaratory Ruling.

38) It is AT&T that knows that if petitioners go to Judge Wigenton and ask her if she wants all the issues resolved and sees the hundred pages of arguments made by each side on these issues over two years, AT&T knows what she will do.

39) AT&T's loading the FCC with tax law citations is absurd. This is not a tax issue. The FCC's job is not to determine tax issues. The FCC is to determine telecom issues not tax issues. The Declaratory Ruling simply determines what the taxable base and is based upon telecom issues. Once the taxable base is determined then AT&T can fight with the taxing authorities as to whether there is an applicable tax and rate to apply to the base which the FCC is being asked to help determine that base. **The FCC has no business reviewing tax laws.** The FCC has to determine these telecom issues so we can argue over the tax issues outside the FCC arena.

40) Please extend the filing deadline on the Inga Companies and consolidate the petitions. If the FCC does not wish to consolidate then please release the Public Notice for the Tips petition and AT&T can respond on record.

Respectfully submitted

Alfonse Inga